



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0095, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain Mirage, S-Series, and K-Series wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Because of Ricon's determination, various vehicle manufacturers who installed the S-Series, and K-Series wheelchair lifts in their motor vehicles determined that their motor vehicles do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles*. Ricon and the various vehicle manufacturers, collectively referred to as the "the petitioners," filed the appropriate noncompliance reports and subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioners' petitions.

DATES: The closing date for comments on the petition is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ricon determined that certain Mirage, S-Series, and K-Series wheelchair lifts do not fully comply with paragraph S6.10.2.6 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403) and filed noncompliance reports, dated May 15, 2018, and May 25, 2018, (and later amended their May 15, 2018 noncompliance report on June 12, 2019) pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Ricon subsequently petitioned NHTSA on June 13, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Because of Ricon's determination, the following vehicle manufacturers who installed the S Series, and K Series wheelchair lifts in their motor vehicles determined that their motor vehicles do not fully comply with paragraph S4.1.1 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). The various vehicle manufacturers also filed noncompliance reports, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* and subsequently petitioned NHTSA, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

ElDorado Mobility, Inc. (ElDorado) has determined that certain model year (MY) 2014-2018 Revability Advantage Ram Promaster 1500 and 2500 motor vehicles do not fully comply with paragraph S4.1.1 of FMVSS No. 404. ElDorado filed a noncompliance report dated July 3, 2018, and later amended it on August 11, 2018. ElDorado petitioned NHTSA on August 6, 2018.

Champion Bus, Inc. (Champion) has determined that certain MY 2012-2018 Champion buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Champion filed a noncompliance report dated July 5, 2018 and later amended that report on August 11, 2018. Champion petitioned NHTSA on August 8, 2018.

Collins Bus Corporation (Collins) has determined that certain MY 2012-2018 Collins school buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Collins filed a noncompliance report dated July 10, 2018, and later amended it on August 11, 2018. Collins petitioned NHTSA on August 7, 2018.

ElDorado National Kansas (ENC) has determined that certain MY 2012-2018 ENC buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. ENC filed a noncompliance report in July 3, 2018, and later amended it on August 11, 2018. ENC petitioned NHTSA on August 6, 2018.

Daimler Trucks North America, LLC (DTNA) has determined that certain MY 2013-2019 Thomas Built Buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. DTNA filed two noncompliance reports, both dated July 18, 2018, and later amended both reports on August 15, 2018. DTNA petitioned NHTSA on August 15, 2018.

Navistar, Inc. (Navistar) has determined that certain MY 2013-2019 IC buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Navistar filed two noncompliance reports both dated June 20, 2018, and both were later amended August 17, 2018. Navistar petitioned NHTSA on July 19, 2018 and amended the petition on September 24, 2018.

This notice of receipt of petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petitions.

II. Equipment and Vehicles Involved:

On May 15, 2018, Ricon submitted a noncompliance report that reported approximately 29,245 S-Series and K-Series wheelchair lifts, manufactured between May 7, 2012, and May 9,

2018, were potentially involved. In conjunction with its May 15, 2018, noncompliance report, Ricon submitted a second noncompliance report on May 25, 2018, that reported approximately 2,454 Mirage wheelchair lifts, manufactured between October 2, 2012, and May 18, 2018, were also potentially involved. On June 13, 2018, Ricon filed an inconsequential noncompliance petition that reported 23,379 S-Series and K-Series wheelchair lifts and 2,454 Mirage wheelchair lifts were involved. NHTSA contacted Ricon to inquire about the differences in the number of S-Series and K-Series wheelchair lifts potentially involved as reported in its petition and noncompliance report. This led to Ricon amending their May 15, 2018 noncompliance report on June 12, 2019 changing the number of S-Series and K-Series wheelchair lifts potentially involved from 29,245 to 23,379 and the production dates from May 7, 2012, through May 9, 2018, to October 2, 2012, through May 9, 2018.

In concert with Ricon's filings, 6 original equipment manufacturers (OEMs) who Ricon sold lifts to and who installed the S-Series and K-Series lifts in its vehicles also filed noncompliance reports and inconsequential noncompliance petitions. Appropriately, ElDorado, Champion, Collins, ENC, DTNA, and Navistar determined the following vehicles are potentially involved:

Approximately 42 MY 2014-2018 Eldorado Revability Advantage Ram Promaster 1500/2500 motor vehicles, manufactured between September 1, 2014, and June 30, 2018.

Approximately 1,500 MY 2012-2018 Champion Challenger, Defender, Crusader, American, American Coach, American Crusader, CTS-FE, CTS-RE, HC American, Platinum Shuttle, and Stacked Rail Impulse buses, manufactured between May 7, 2012, and May 9, 2018.

Approximately 1,947 MY 2012-2018 Collins multi-function school activity buses (MFSAB) and Commercial buses, manufactured between May 1, 2012, and June 1, 2018.

Approximately 1,447 MY 2012-2018 Eldorado, Aerotech, Aerolite, Aero Elite, Transtech, Advantage, World Trans, and Impulse buses, manufactured between May 1, 2012, and June 1, 2018.

Approximately 31 MY 2013-2019 Thomas Built Buses Saf-T-Liner C2, Saf-T-Liner EFX, and Saf-T-Liner HDX commercial buses, manufactured between July 21, 2012, and April 4, 2018, and approximately 3,834 MY 2013-2019 Thomas Built Buses Saf-T-Liner C2, Saf-T-Liner EFX, and Saf-T-Liner HDX school buses, manufactured between May 5, 2012, and July 4, 2018.

Approximately 2,892 MY 2013-2014 IC Bus AE, MY 2013-2015 IC Bus BE, MY 2013-2019 IC Bus CE, MY 2013-2014 IC Bus RE, and 2016-2017 IC Bus RE school buses, manufactured between May 10, 2012, and May 2, 2018, and approximately 29 MY 2013-2018 IC Bus CE and RE commercial buses, manufactured between May 10, 2012, and November 7, 2017.

Ricon reported that 2,454 Mirage wheelchair lifts and 23,379 S-Series and K-Series wheelchair lifts are potentially involved while the OEMs reported, in total, 11,722 vehicles with the noncompliant S-Series and K-Series wheelchair lifts are potentially involved. To date, no OEMs have filed for the Mirage wheelchair lifts. On multiple occasions, NHTSA made inquiries to Ricon to reconcile the difference in the number of lifts Ricon reported as containing the noncompliance versus the number of vehicles equipped with these lifts. On June 10, 2020, Ricon provided a table that reported that 30,127 S-Series and K-Series wheelchair lifts were produced, with 7,055 going to dealers, 22,850 going to OEMs, and 222 to its parent company Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series wheelchair lifts and the total number of vehicles as reported by the OEMs.

RICON S-Series and K-Series Wheelchair Lifts Potentially involved				
	Ricon 5/15/18 Reporting	Ricon 6/12/19 Reporting	Ricon 6/10/20 Reporting	Total OEM 573 Reporting
DEALERS			7,055	
OEMs			22,850	
WABTEC*			222	
Total	29,245	23,379	30,127	11,722

*Ricon is a subsidiary of WABTEC

The total number of vehicles reported by the OEMs has not changed and the number S-Series and K-Series wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 18,405 lifts that have not been accounted for. Despite several meetings and communication with Ricon aimed at identifying the distribution and disposition of lifts not sold directly to vehicle manufacturers NHTSA has not been able to obtain additional information about those lifts. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that it's S-Series and K-Series platform lifts and its Mirage platform lifts do not comply with the outer barrier interlock requirements of FMVSS 403, S6.10.2.6 when tested in accordance with the test procedure at S7.5.1.1 and S7.5.1.2. To that end, the subject lifts, as installed in certain commercial buses or school buses, do not comply with paragraph S4.1.1 of FMVSS No. 404.

IV. Rule Requirements: Paragraph S6.10.2.6 of FMVSS No. 403, includes vertical deployment requirements for a platform lift equipped with an outer barrier when occupied by portions of the passenger's body or mobility aid during the operation of the lift. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in paragraph S7.5.1.

Paragraph S4.1.1 of FMVSS No. 404, requires lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lbs.) to be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions: The petitioners described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of their petitions, the petitioners submitted the following arguments:

1. The performance of the Ricon lifts do not create an increased risk to safety:

S-Series and K-Series Lifts

- a) Per The petitioners, the S-Series and K-Series lifts are used as both public use and private use lifts. These lifts have a retention belt as part of the platform lift design. The retention belt consists of durable webbing which is attached to and when belted, extends across each of the handrails. The retention belt serves dual purposes and is a redundant safety feature. The retention belt is a means to physically secure an occupant within the lift. In addition, the retention belt acts as an electrical interlock that is linked to the operation of the lift. If the retention belt is buckled, the electrical circuit is closed and the platform and outer barrier can operate when the buttons on the operator's pendant are pressed. If the belt is not buckled, the electrical circuit is broken and there is no power sent to any part of the lift, the platform cannot move and the outer barrier will not deploy in either direction.
- b) The petitioners contend the nonconformance to the outer barrier interlock provision arises only when the unit is tested to the directions provided in the test procedure itself, when the retention belt is buckled and the wheelchair test device attempts to access the outer barrier. However, in actual use the outside of the test environment, the retention belt would not be buckled (and the lift would not be powered at any time an occupant is attempting to traverse the outer barrier).
- c) The petitioners state that under the test conditions in S7.5.1.1, once the platform lift is placed at the ground level loading position with the outer barrier fully deployed, the wheelchair test device is placed on the platform. Once the occupant is secured by the buckled retention belt, the length of the belt prevents the occupant from physically

accessing the outer barrier. If the belt is unbuckled, no power is sent to either the lift or the outer barrier and they will not be able to move. Therefore, any time an occupant is present on the platform portion of the lift, the design of the lift protects the occupant from inadvertent movement of the outer barrier.

- d) Alternatively, the petitioners contend the test procedure provides that if the wheelchair test device cannot access the outer barrier because of a belt retention type device, the test may alternatively be conducted with the wheelchair test device on the ground facing the entrance to the lift. An occupant entering the lift from the ground level also does not present an increased risk to safety. As an initial matter, if an occupant were attempting to access the platform from ground level outside the vehicle, the outer barrier would not be able to move unless the belt was buckled. If the belt is buckled, it stretches across the handrails and the occupant cannot access the platform because the secured belt blocks the way. Once the lift is maneuvered to ground level and the outer barrier is deployed, the lift attendant or private individual must unbuckle the belt to allow access to the platform. At this point, the electrical circuit is broken and there is no power to the lift or outer barrier and no risk to the occupant accessing the lift. Once the occupant is safely positioned on the platform, the belt is re-buckled and power is restored.
- e) Per The petitioners, a separate issue is that the test procedure in S7.5.1.1 provides that when loading from the ground, the wheelchair test device should be placed on the ground facing the entrance to the lift. The instruction to have the wheelchair test facing the entrance to the lift is contrary to the Ricon operator's manual instructions and industry practice. The industry standard practice is to load wheelchair occupants onto a lift with their back to the vehicle. Loading in this direction prevents injury to

the occupant's lower extremities and feet. As written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual.¹

- f) The petitioners argue that it provides instructions in the operator's manual describing how an occupant should board the lift and how an occupant should exit a vehicle. Ricon also provides decals to indicate to the operator the correct means to load an occupant onto each wheelchair lift, which are placed on the vertical arms of the lift and face outward of the vehicle so that they are visible when loading a passenger onto the lift from the ground level.

Mirage Lifts

- a) Per The petitioners, the Mirage lifts are public use lifts. The Mirage lifts also incorporate a belt retention device into its design, but the belt interlock functions somewhat differently than the S-Series and K-Series lifts. The belt on the Mirage lifts acts as an interlock sensor that detects whether the outer barrier is in a vertical (closed) position. When the outer barrier is closed and the retention belt is buckled, the platform can operate. If the belt is unbuckled, the outer barrier can move from horizontal (open) to vertical (closed), but the platform itself cannot operate.
- b) The petitioners state that as with the S-Series and K-Series lifts, when an occupant is on the platform, he/she is to be secured by the restraint belt. To exit the lift and cross the outer barrier, the belt must be unbuckled. Unbuckling the retention belt eliminates power sent to the platform.
- c) The petitioners argue that NHTSA's concern in adopting the outer barrier interlock in 2007 was that occupants could be pitched from the lift if the lift moved when the

¹ During the FMVSS No. 403 rulemaking process, a manufacturer noted that portions of the rule had testing conducted in one direction when the owner's manual provided for a different loading direction. *See* 67 FR 425-26.

The manufacturer took the position that such inconsistencies were contrary to the requirements of the ADA. In response, NHTSA concluded that since the ADA does not apply to private use lifts, the loading requirements were not inconsistent with the ADA. Here, however, the Ricon lifts are used as public use lifts. Although the ADA states that the lift shall permit for boarding and unboarding in both directions, the industry practice and Ricon's (and other manufacturers) instructions provide for boarding in the reverse as an added level of occupant protection.

outer barrier was occupied. This concern does not exist in Ricon's design. When the belt is unbuckled, as it would be anytime a person is entering or exiting the lift, the platform is not powered and cannot move. If the belt is buckled and the lift is powered, the retention belt blocks access to the outer barrier if the occupant is present on the platform.

2. NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.

- a) Per the petitioners, the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403, finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. The performance of Ricon's platform lifts are consistent with this precedent.
- b) For example, the petitioners contend the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force. While the handrails collapsed when exposed to forces above the threshold requirement, the handrail did not collapse or fail catastrophically. The petitioners state the Agency explained that its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails which would expose the occupant to a risk of injury. In granting the petition, the Agency "anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems." The Agency, in the petitioners' view, recognized the noncompliance, in this case, did not "pose a safety concern that the handrail requirements were intended to address." *See* 72 FR 19754 (April 19, 2007).

- c) The petitioners note that as with the Braun petition, the technical noncompliance in the Ricon outer barrier emerges only because of the revisions to the test procedure implemented in 2012. In actual use and consistent with the operator's manual, the retention belt should never be buckled (and it would be illogical to do so) when an occupant is attempting to traverse the outer barrier. As such, the noncompliance does not create a real-world safety concern and certainly not the type of safety concern that the outer barrier interlock was intended to address the movement of the lift platform while the outer barrier was occupied.
- d) The petitioners state that NHTSA has also granted an inconsequentiality petition submitted by Maxon Industry Inc. (Maxon) where the deployed wheelchair retention device was unable to withstand the required 1,600 pounds of force. In that case, the Maxon lifts included some designs where the outer barrier served as the wheelchair retention device and other designs with both a belt retention device and an outer barrier. The belt retention device also served as an electronic interlock that precluded the lift from moving up or down unless buckled.² Per The petitioners, the Agency granted the petition as to the units which incorporated the retention belt and noncompliant outer barrier, finding that such a design did not create an increased risk to safety since the belt's operation precluded the lift from moving and prevented the stated safety concern. The petitioners contend that the Agency denied the petition as to those units without the retention belt, reasoning that the lift occupant would only be relying upon a noncompliant outer barrier for protection. *See* 72 FR 28759 (May 22, 2007).
- e) The petitioners also state that Ricon lifts incorporate a retention belt that operates in the same manner as the belt described in the Maxon petition. In both cases, the belt

² Ricon is aware of multiple manufacturers that use a belt interlock that functions in the same or similar manner to restrict the operation of the platform lift.

precludes the lift from operating unless it is buckled. In granting the Maxon petition, the petitioners argue the Agency recognized the belt acted as a redundant safety feature (along with the technically noncompliant outer barrier) that precluded any safety risk. The belt interlock in the Ricon lifts as well as the operator's manual instructions create similar redundancies and offer equivalent protection to occupants.

- f) Finally, the petitioners state the environment in which these lifts are used diminishes any potential risk to safety. When operated as a public use lift, there will be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely. When the lift attendant or private individual is following the operator's manual, there should not be an instance where the lift platform is powered and the occupant is unrestrained. Ricon has used this same design lift since the start of production for decades and without incident as it relates to the performance of the outer barrier interlock.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioner's petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance

existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8

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